

# SIDLEY & AUSTIN 14861

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATION 50

Filed 1425

1722 EYE STREET, N.W.  
WASHINGTON, D.C. 20008  
TELEPHONE 202: 429-4000  
TELEX 89-463

DEC 5 1985 - 10 45 AM  
INTERSTATE COMMERCE COMMISSION

ONE FIRST NATIONAL PLAZA  
CHICAGO, ILLINOIS 60603  
312: 853-7000 TELEX 25-4364

2049 CENTURY PARK EAST  
LOS ANGELES, CALIFORNIA 90067  
213: 553-8100 TELEX 18-1391

520 MADISON AVENUE  
NEW YORK, NEW YORK 10022  
212: 418-2100 TELEX 97-1696

31 ST. JAMES'S SQUARE  
LONDON, SW1Y 4JR, ENGLAND  
44-1: 930-5596 TELEX 21781

5 SHENTON WAY  
SINGAPORE 0106  
65: 224-5000 TELEX 28754

P.O. BOX 190  
MUSCAT, SULTANATE OF OMAN  
TELEX 5266

P.O. BOX 6750  
DUBAI, DUBAI, U.A.E.  
9714-283194 TELEX 47216

P.O. BOX 6891  
ABU DHABI, U.A.E.  
9712-321850 TELEX 23603

P.O. BOX 8650  
RIYADH, SAUDI ARABIA  
966-1-463-4160 TELEX 204947

SIDLEY & AUSTIN & NAGUIB  
12, MIDAN EL SHEIKH YOUSSEF  
GARDEN CITY, CAIRO, EGYPT  
202: 540-608 TELEX 21014

December 5, 1985

5-343A010

12/5/85  
10:00

cc Washington, D.C.

Mr. James H. Bayne  
Secretary  
Interstate Commerce Commission  
Room 2215  
12th and Constitution Avenue  
Washington, D.C. 20423

Dear Mr. Bayne:

Enclosed herewith are an original and one copy of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the United States Code.

The document is a lease, a primary document, dated November 22, 1985.

The names and addresses of the parties to the Lease are as follows:

Lessee: CANADIAN NATIONAL RAILWAY COMPANY  
935 de La Gauchetiere Street West  
Montreal, Quebec, Canada  
H3B 2M9

Lessor: CITIBANK LEASING CANADA LIMITED  
5050 South Service Road  
Burlington, Ontario, Canada  
L7R 4C8

A description of the equipment covered by the Lease follows:

Type of Fully enclosed 70-Ton Low Deck  
Equipment: Tri-Level Freight Cars

100 OFFICE OF  
THE SECRETARY  
DEC 5 4 55 PM '85  
NOTICE OPERATING UNIT

Mr. James H. Bayne  
December 5, 1985  
Page Two

Specifications: CN's General Specifications SS-1974  
Revised July, 1976, CN Specification  
F-140-3 dated August, 1985 and CN  
General Arrangement Drawing 9H-51923-B,  
Builder's Proposal dated 12 August 1985  
and letter of 22 August 1985, and CN's  
letter dated 22 August 1985

Quantity: 155

Identification Marks: "OWNERSHIP FILED WITH THE REGISTRAR  
GENERAL OF CANADA AND I.C.C."

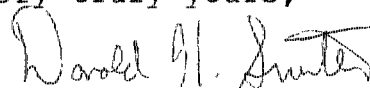
Lessee's Road  
Numbers (Both  
Inclusive): CN 704365 through CN 704519

A fee of \$10.00 is enclosed. Please return the original after recordation to the undersigned at the address listed above.

A short summary of the Lease to appear in the index follows:

"Lease agreement between CANADIAN NATIONAL RAILWAY COMPANY, 935 de La Gauchetiere Street West, Montreal, Quebec, Canada, H3B 2M9, Lessee, and CITIBANK LEASING CANADA LIMITED, 5050 South Service Road, Burlington, Ontario, Canada, L7R 4C8, Lessor, dated November 22, 1985, covering 155 low deck tri-level freight cars."

Very truly yours,



Donald H. Smith

DHS:mjo

Enclosure

14861

RECORDATION No. .... Filed 14861

DEC 5 1985 - 10 45 AM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT  
BETWEEN  
CITIBANK LEASING CANADA LIMITED  
AND  
CANADIAN NATIONAL RAILWAY COMPANY

Dated as of November 22, 1985

*San 20/21*

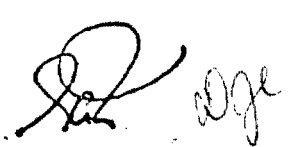
LEASE OF RAILROAD EQUIPMENT BETWEEN  
CITIBANK LEASING CANADA LIMITED AND  
CANADIAN NATIONAL RAILWAY COMPANY

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A.	Description of Units
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## LEASE

THIS LEASE OF RAILROAD EQUIPMENT dated as of November 22, 1985, between CITIBANK LEASING CANADA LIMITED (hereinafter called the "Lessor"); a company constituted under the laws of Canada and having an office at 5050 South Service Road, Burlington, Ontario, L7R 4C8, as owner and CANADIAN NATIONAL RAILWAY COMPANY (hereinafter called the "Lessee"), a corporation continued under the laws of Canada and having an office at 935 de La Gauchetiere West, Montreal, Quebec, H3B 2M9, as lessee.

WHEREAS the Lessee has entered into an equipment purchase agreement dated November 7, 1985 (hereinafter called the "Equipment Purchase Agreement"), between Hawker Siddeley Canada Inc. (hereinafter called the "Builder"), as seller and the Lessee, as purchaser, pursuant to which the Lessee has agreed to acquire all of the units of railroad equipment described in Schedule A hereto (hereinafter called the "Units");

AND WHEREAS pursuant to a direction and disbursement agreement (the "Direction") of even date made among the Lessor, the Lessee and the Builder, the parties have agreed that title to and ownership of the Units shall pass directly to the Lessor and that, except as otherwise provided therein, payment for the Units in accordance with the Direction and Equipment Purchase Agreement shall be made by the Lessor;

AND WHEREAS the Lessee desires to lease all the Units that are duly delivered and accepted as provided herein at the rentals and upon the terms and conditions hereinafter provided.

NOW THEREFORE in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units so delivered and accepted as provided herein to the Lessee for the Term upon the following terms and conditions:

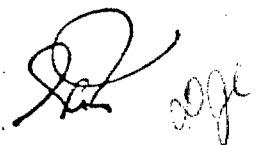
### 1. Interpretation

Except where the context otherwise requires:

"Arrears" means the total of all Rentals and other moneys, if any, due and owing by the Lessee hereunder, while unpaid.

"Builder" has the meaning ascribed thereto in the recitals to this Agreement.

"Business Day" means any day other than a Saturday, Sunday or other day on which the Lessor is not open for business in the cities of Toronto and Montreal.



"Casualty Occurrence" shall have the meaning ascribed thereto in Section 6.

"Dollars" or "\$" means lawful money of Canada.

"Direction" shall have the meaning ascribed thereto in the recitals to this Agreement.

"Equipment Purchase Agreement" has the meaning ascribed thereto in the recitals to this Agreement.

"Event of Default" shall have the meaning ascribed thereto in Section 9.1.

"Lease Commencement Date" means with respect to each Unit, the date the same shall be deemed to be delivered to the Lessee in accordance with Section 2.

"Lessee" has the meaning ascribed thereto in the recitals to this Agreement.

"Lessor" has the meaning ascribed thereto in the recitals to this Agreement.

"Lessor's Acquisition Cost" means the amount actually advanced by the Lessor to the Builder or others pursuant to the Equipment Purchase Agreement, the Direction or otherwise in respect of the Units; provided however, that in no event shall the aggregate of such amounts be less than \$18,000,000 or exceed \$22,000,000.

"Office" means the office of the Lessor referred to in the first paragraph of this Agreement (Attention: Secretary) or such other office as the Lessor may notify the Lessee from time to time in accordance with Section 19.

"Rental" means the rental payable for each Period as provided in Section 3.

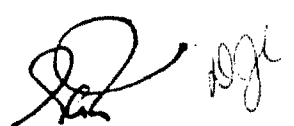
"Rental Commencement Date" means February 1, 1986.

"Period" means each six-month period subsequent to the Rental Commencement Date; the Term comprising 35 Periods.

"Stipulated Loss Value" means at any time, the applicable amount specified in Schedule B hereto.

"Temporary Alterations" has the meaning ascribed thereto in Section 8.6.

"Term" means the period commencing as to each Unit on the Lease Commencement Date with respect thereto to and including July 31, 2003, or such lesser period as may be determined hereunder.

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"Units" has the meaning ascribed thereto in the recitals to this Agreement.

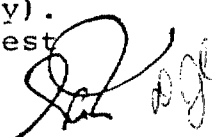
## 2. Delivery and Acceptance of Units

The Units will be tendered to the Lessee on behalf of the Lessor in accordance with the Equipment Purchase Agreement and the Direction. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if each such Unit is found to be in good order, to accept delivery of each such Unit and execute and deliver to the Lessor a certificate of acceptance and delivery substantially in the form attached as Schedule C hereto, whereupon each such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

## 3. Rentals

(a) The Lessee agrees to pay to the Lessor on the Rental Commencement Date one interim rental payment. The interim rental payment shall be an amount equal to the Interim Interest (as hereinafter defined) calculated on that amount of the Purchase Price (as defined in the Equipment Purchase Agreement) paid by the Lessor to the Builder for each Unit subject to this Lease for the period from and including the date of payment by the Lessor to the Builder of such amount of such Purchase Price to but not including the Rental Commencement Date. For purposes of this Section 3(a), "Interim Interest" means an aggregate amount equal to the sum of the amounts calculated by multiplying that amount of the Purchase Price for Units paid for by the Lessor to the Builder on each said payment date by a percentage equal to the Bank of Canada Bank Rate plus 55 basis points as established at the Auction held on or immediately preceding each said payment date (whichever is later).

(b) From and after the Rental Commencement Date, the Lessee agrees to pay the Lessor Rental for each Unit subject to this Lease for each Period, together with other applicable payments herein provided. Such Rental shall be an amount equal to the rental rate (as hereinafter determined) applied as a percentage of Lessor's Acquisition Cost and will be payable in level, consecutive, semi-annual instalments in arrears for the period commencing February 1, 1986 and expiring July 31, 2003. Such rental rate shall be settled as of the Rental Commencement Date and shall be based upon the percentage determined by calculating the average of (x) the Long Canada Bond Interest Rate (as hereinafter defined) published on or next preceding the Rental Commencement Date (whichever is later) and (y) the average of the three Long Canada Bond Interest Rates published next preceding the Long Canada Bond Interest Rate referred to in (x) and deducting 80 basis points from such calculated average of (x) and (y). For purposes of this Section 3(b), "Long Canada Bond Interest



Rate" means the average bond yield published by the Bank of Canada for Government of Canada bonds with maturities over 10 years, this average being published each Thursday in the Bank of Canada's Weekly Financial Statistics.

This Lease is a net lease and the Lessee shall not be entitled to any abatement, reduction or set-off against payments hereunder including, but not limited to, abatement, reductions or set-offs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against use of all or any of the Units by the Lessee or any other person, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease or any other document or instrument, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Rentals and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

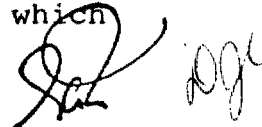
Whenever any payment shall be stated to be due on a day which is not a Business Day, such payment shall be made on the next preceding Business Day. All such payments shall be made to the Lessor at the Office in immediately available funds at or before 11:00 a.m. Toronto time on the date due.

#### 4. Identification Marks

The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto and will after the acceptance of delivery of each Unit, mark each Unit and will thereafter keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than three-eighths inch in height, the following words:

"OWNERSHIP FILED WITH THE REGISTRAR GENERAL OF CANADA AND THE ICC"

or other appropriate words designated by the Lessor, with appropriate changes therein and additions thereto as from time to time may be required by law in order to protect the interests of the Lessor and any secured party in each Unit and under this Lease. The Lessee will not change or permit to be changed the identifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which





statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited at the Lessee's cost and expense in all public offices where this Lease will have been filed, recorded or deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or any permitted sublessee on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

#### 5. Taxes

(a) The Lessee agrees to pay and to indemnify and hold the Lessor harmless on an after tax basis from all taxes, assessments, duties, license and registration fees and other governmental charges, including penalties and interest (hereinafter collectively referred to as "Taxes") imposed, levied or assessed by any federal, provincial or local government or taxing authority in Canada, or, if as a result of the operation, possession or use of any Unit by or through the Lessee in any foreign country, by any government or taxing authority in a foreign country, against such Unit or upon or measured by any interest therein, or upon or with respect to the purchase, ownership, delivery, leasing or possession thereof by the Lessor, or upon or with respect to the use, possession or operation thereof by the Lessee, or on account of or measured by the rentals, earnings or gross receipts arising pursuant to this Lease (including any payment or indemnity under this Lease), provided that the Lessee shall not be required to pay the same (or any amount by way of indemnity of the Lessor or otherwise pursuant to this Section) if and so long as it shall in good faith and with due diligence and by appropriate legal or administrative proceedings contest the validity, applicability or amount thereof (but only so long as such proceedings shall stay the collection thereof and shall not involve any risk of the sale, forfeiture or loss of any Unit or any interest therein). If a claim is made against the Lessor for any Taxes, then the Lessor shall use its reasonable efforts to notify the Lessee promptly and, if so requested by the Lessee, shall at the Lessee's expense contest the validity and amount of any Taxes which it may be required to pay and in respect of which it is entitled to reimbursement by the Lessee under this Section so long as the rights or interests of the Lessor hereunder or in such Unit will not be materially endangered thereby.

(b) Notwithstanding the provisions of paragraph (a) of this Section 5, the Lessee shall have no obligation thereunder as to:

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- (1) any Taxes on, based on or measured by the net income of the Lessor imposed (i) by Canada, a province or other local taxing authority in Canada or (ii) by any foreign government or any taxing authority or governmental subdivision of a foreign country to the extent allowed as a credit against income taxes imposed by Canada, a province, or other local taxing authority taking into account any applicable limitation on the aggregate amount of such credit and after assuming that all other Taxes of the Lessor for the same or prior periods which qualify for such credit are first allowed;
  - (2) any Taxes on, based on, or measured by, the net income of the Lessor imposed by any foreign government or any taxing authority or governmental subdivision of a foreign country by virtue of the Lessor being engaged in business in such foreign country through activities unrelated to the transactions contemplated by this Lease to the extent the Lessee's obligation as to such Taxes would otherwise exceed the amount of such Taxes which would be payable if the Lessor were not so engaged in such business; or
  - (3) any Taxes which are or may become imposed by Canada on rental or similar payments being made under this Lease to a non-resident of Canada (as defined in the Income Tax Act (Canada));
- (d) In the event any reports with respect to Taxes are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor in such Units or notify the Lessor of such requirement and will make such reports in such manner as shall be satisfactory to the Lessor.
- (e) In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any Taxes pursuant to this Section, such liability shall continue, notwithstanding the expiration of this Lease, until all such Taxes are paid or reimbursed by the Lessee.

#### 6. Payment for Casualty Occurrences

In the event that any Unit shall be or become lost, stolen, destroyed, irreparably damaged or damaged beyond economic repair, from any cause whatsoever or taken or requisitioned by condemnation, expropriation or otherwise for a period in excess of 90 days (such occurrences being hereinafter called "Casualty Occurrences") during the term of this Lease, the Lessee shall promptly, after it shall have determined that such Unit has suffered a Casualty Occurrence, fully inform the Lessor in regard thereto. The Lessee shall upon 20 days' prior written notice to the Lessor, pay to the Lessor on the next succeeding rental payment date which is more than 20 days after notice is given of such Casualty Occurrence, an amount equal to the Stipulated Loss Value



of such Unit calculated as of such rental payment date plus the Rental due on such date in respect of such Unit and only after making such payment the Rental for such Unit shall cease to accrue and the term of this Lease as to such Unit shall terminate. The Lessor shall, upon request of the Lessee, after payment by the Lessee of a sum equal to the Stipulated Loss Value of any such Unit, deliver to or upon the order of the Lessee a bill of sale (without recourse, representations or warranties) for such Unit executed by the Lessor and such other documents as may reasonably be required in order to transfer to the Lessee such title to such Unit as the Lessor received from the Builder free and clear of all liens, security interests and other encumbrances arising through the Lessor.

The rights and remedies of the Lessor to enforce or recover any of the Rentals or any other amounts which are due and payable hereunder prior to the incurring of the obligation to pay the Stipulated Loss Value of any Unit shall not be affected by reason of the Casualty Occurrence with respect to such Unit.

#### 7. Annual Reports

On or before April 1 in each year commencing with the year 1986, the Lessee will cause to be furnished to the Lessor in such number of counterparts or copies as may reasonably be requested an accurate statement signed by a responsible officer of the Lessee, as of the preceding December 31,

(a) showing the amount, description and numbers of the Units then leased hereunder, the amount, description and number of all Units that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request,

(b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the markings required by Section 4 have been preserved or replaced, and

(c) stating whether or not an Event of Default shall have occurred during the period covered by such statement and, if an Event of Default shall have occurred, whether or not the same is continuing and what steps the Lessee has taken or is taking to cure such Event of Default.

The Lessor shall have the right upon reasonable notice to the Lessee at its sole cost and expense, by its authorized representatives, to inspect the Units and the Lessee's maintenance records with respect thereto, at all reasonable times to view the state and condition of the Units and to confirm to the Lessor the existence and proper maintenance thereof during the continuance of this Lease; provided, however, that the Lessee shall not be



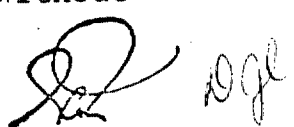
liable, except in the case of gross negligence of the Lessee or of its employees or agents, for any damage, injury to, or the death of any persons exercising on behalf of the Lessor or any prospective assignee of the Lessor, the rights of inspection granted hereunder.

8. Disclaimer of Warranties; Lessor's Representations and Warranties; Compliance with Laws and Rules; Maintenance; Indemnification; Lessee's Representations and Warranties

8.1 The Lessee acknowledges that the Units and the manufacturer of the Units have been selected by the Lessee alone, that neither the Lessor nor its employees or agents is a manufacturer, dealer or distributor of railroad equipment, or expert with respect thereto, that the Builder is not an agent of the Lessor and, accordingly, the Lessee without prejudice to any rights which the Lessee may have against the Builder or others, and subject as provided in Section 8.7, hereby releases and forever discharges the Lessor from any and all actions, causes of action, debts, damages, costs, expenses, claims, demands, rights or defences which, at any time now or hereafter may arise out of or in relation to the Units. The Lessee agrees that the Lessee has made or shall in fact make all appropriate and prudent studies in connection with the selection of the Units and all the tests and inspections thereof, as would a careful and prudent purchaser. As to all matters of selection, design, patenting, industrial design, trade marks, construction, condition, safety, suitability, fitness, capacity, performance, durability of the Units and all matters whatsoever with respect to the acceptability of the Units, the Lessee shall look only to, and shall rely solely upon the Builder or others, and not to or upon the Lessor or the Lessor's employees or agents.

The Lessor shall have no responsibility or liability under this Lease to the Lessee or any other person with respect to: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any inadequacy of any Units or deficiency or defect therein; or (ii) the delivery, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee acknowledges and agrees that, except to the limited extent otherwise provided herein, there are and will be no agreements, representations, warranties or conditions, expressed or implied, oral or written, legal, equitable, statutory, conventional, collateral or otherwise, on the part of the Lessor respecting or in connection with the Units and that the Lessor has undertaken this transaction strictly in reliance upon the terms, conditions and provisions of this Section. Without



limiting the generality of the foregoing, the Lessee agrees that any latent defects in or any failure of the Units shall be conclusively deemed not to be or to constitute a fundamental or other breach hereof by the Lessor, or a failure of performance or consideration hereunder on the part of the Lessor, it being understood that this agreement shall be conclusively deemed, as between the Lessor and the Lessee, to be in substance a financial transaction.

8.2 The Lessor represents and warrants as follows:

(i) at the time of delivery of each Unit under this Lease, the Lessor shall have such title to such Unit as is derived from the Builder, unimpaired by any act or omission of the Lessor which will in any manner prevent the performance of this Lease in accordance with its terms and, in addition, such Unit shall be free and clear of all claims, liens and encumbrances, which may result from claims against the Lessor not arising out of the ownership thereof which will prevent the performance of this Lease in accordance with its terms;

(ii) so long as an Event of Default shall not have occurred and is then continuing under this Lease, the Lessor shall not do (or suffer to be done by any person claiming through or against the Lessor and not against the Lessee or any sublessee) any act which interferes with any and all rights of the Lessee to peaceably and quietly hold, possess and use the Units in accordance with the terms of this Lease;

(iii) the Lessor is a corporation duly incorporated and validly existing under the laws of Canada, with adequate corporate power to enter into this Lease;

(iv) this Lease has been duly authorized, executed and delivered by the Lessor and constitutes a legal, valid and binding obligation of the Lessor enforceable in accordance with its terms;

(v) the entering into and performance of this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessor is a party or by which it may be bound or contravene any provision of law, statute, rule or regulation to which the Lessor is subject or any judgment, decree, franchise, order or permit applicable to the Lessor; and

(vi) there are no actions, suits or proceedings pending or, to the knowledge of the Lessor, threatened against the Lessor affecting this Lease or the transaction contemplated hereby which could, if adversely determined, materially and adversely affect the carrying out of such transaction.



8.3 The Lessor covenants that any sale, assignment, transfer, mortgage or other disposition which it may make of this Lease or of any Unit, whether prior or subsequent to delivery to the Lessee, shall be expressly subject to the terms and provisions of this Lease.

8.4 The Lessee agrees, for the benefit of the Lessor, to comply in all respects with all laws of the jurisdictions in which the Units may be operated, with all applicable interchange rules of the Association of American Railroads, and with all lawful rules of the Canadian Transport Commission and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, the Lease or the Lessee and the Lessee shall and does hereby indemnify the Lessor and agrees to hold the Lessor harmless from and against any and all liability that may arise from any infringement or violation of any such laws or rules by the Lessor or the Lessee or any sublessee, or their employees, or any other person. In the event that such laws or rules require alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in any case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Lease; provided, however, that the Lessee may, in good faith, contest with due diligence by appropriate legal proceedings the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, adversely affect the property rights of the Lessor hereunder.



8.5 The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in accordance with the standards in effect from time to time under the interchange rules of the Association of American Railroads (if applicable) and the Canadian Transport Commission in good order and repair, reasonable wear and tear excepted.

8.6 The Lessee may, at its expense and without the prior consent or notice to the Lessor, make any alteration, improvement or addition to any of the Units as it may deem desirable in the proper operation of its business provided that such alteration, improvement or addition shall not diminish the value or materially impair the continuing use of such Units. Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit or any part thereof shall be considered accessions to such Unit (except such as are not (i) required by laws or rules referred to in Section 8.4, (ii) replacements or substitutions of existing parts or equipment rather than additions thereto, and (iii) readily removable without material

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damage thereto and without diminishing the value of or impairing the originally intended function or use of, such Unit (hereinafter called "Temporary Alterations")), and ownership of such accessions (except as aforesaid) free of any lien, charge, security interest or encumbrance shall immediately be vested in the Lessor. The Lessor and Lessee recognize that Temporary Alterations may be made to any of the Units and may be owned by the Lessee and with the prior written consent of the Lessor (such consent not to be unreasonably withheld) may be financed by persons other than the Lessee. Upon termination of this Lease, the Lessee may, and, at the request of the Lessor, shall at the Lessee's sole cost and expense, remove the Temporary Alterations from the Units and will restore the Units to satisfactory operating condition and to their original physical condition at the time of delivery thereof to the Lessee hereunder, reasonable wear and tear excepted. Ownership of any Temporary Alterations not so removed by the Lessee shall pass to and vest in the Lessor.

8.7 The Lessee agrees to indemnify and save harmless the Lessor against any charge or claim made against the Lessor, and against any expense, loss or liability (including but not limited to solicitors' fees and expenses, patent liabilities, penalties and interest) which the Lessor may incur in any manner by reason of entering into or of the performance of this Lease or by reason of the ownership of any Unit, or which may arise in any manner out of or as the result of the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit under this Lease or the occurrence of any Event of Default hereunder or any event which with the giving of notice, or lapse of time, or both, would become an Event of Default. The Lessee further agrees to indemnify and save harmless the Lessor against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property or injury to any person; provided, however, that the Lessee shall not be required to indemnify the Lessor under this Section for negligence on the part of the Lessor, its employees and agents. The indemnities arising under this Section shall survive payment of all other obligations under this Lease or the termination of this Lease. Anything herein to the contrary notwithstanding, the Lessee shall not be obligated to indemnify under this Section in respect of any charge, claim, expense, loss or liability attributable to a Unit which, and to an event occurring after such Unit, shall have been assembled, delivered, stored and transported to the Lessor pursuant to the provisions hereof or after this Lease with respect to such Unit has otherwise terminated; provided, however, that such charge, claim, expense, loss or liability does not arise as a result of mechanical defects of such Unit which existed at the time such Unit was so returned or this Lease with respect to such Unit terminated. In case any action, suit or proceeding is brought against the Lessor in connection with any claim, indemnified against hereunder, the Lessee may, and upon the request of the Lessor will, at the Lessee's expense resist and defend such



action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and acceptable to the Lessor and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including, without limitation, solicitors' fees and expenses) incurred by the Lessor in connection with such action, suit or proceeding.

Upon the payment in full of any indemnities as contained in this Section 8.7 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice, or both, would constitute an Event of Default) shall have occurred and be continuing, (i) it shall be subrogated to any right of the Lessor in respect of the matters against which indemnity has been given and (ii) any payments received by the Lessor from any person (except the Lessee) as a result of any matter with respect to which the Lessor has been indemnified by the Lessee pursuant to this Section 8.7 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter.

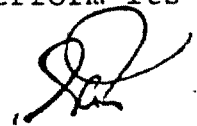
8.8 The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports to be filed by the Lessor with any Federal, provincial, state or other regulatory authority by reason of the interest of the Lessor in the Units or the leasing thereof to the Lessee.

8.9 The Lessee will, at all times prior to the return of the Units to the Lessor in accordance with the terms of this Lease and during any storage period, at its own expense, cause to be carried and maintained public liability and property damage insurance in respect of the Units against the risks and in the amounts, if any, customarily insured against by the Lessee in respect of similar equipment owned or leased by it. Notwithstanding anything to the contrary in this Section 8.9, the Lessee shall be permitted to provide for customary deductibles and/or self insurance.

8.10 The Lessee will furnish to the Lessor, on the later of (i) 90 days after the end of each fiscal year, or (ii) within 10 days of the tabling in the House of Commons of Canada of its annual report, a statement of profit and loss and of surplus for each fiscal year, and a balance sheet as at the end of the such year, all in reasonable detail together with the report and opinion of a firm of independent chartered accountants.

8.11 The Lessee represents and warrants as follows:

(i) the Lessee is a duly incorporated and validly subsisting corporation under the laws of Canada, with full corporate power and authority to own its properties and to carry on its business as presently conducted and to enter into and perform its





obligations under the Equipment Purchase Agreement, this Lease and the Direction;

(ii) this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a legal and valid agreement binding upon the Lessee and enforceable in accordance with its terms;

(iii) no approval is required from any public regulatory body with respect to the entering into or performance of this Lease by the Lessee, or if any such approval is required, it has been properly obtained;

(iv) the entering into and performance of this Lease will not result in any breach of, or constitute a default under any indenture, mortgage, deed of trust, loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound or contravene any provision of law, statute, rule or regulation to which the Lessee is subject or any judgment, decree, franchise, order or permit applicable to the Lessee; and

(v) there are no actions, suits or proceedings pending or, to the knowledge of the Lessee, threatened against the Lessee or its properties or affecting this Lease or the transactions contemplated hereby which could, if adversely determined, materially and adversely affect the carrying out of such transactions;

8.12 The parties acknowledge and agree and the Lessee covenants that promptly after the execution and delivery hereof arrangements will be made, at the expense of the Lessee, for:

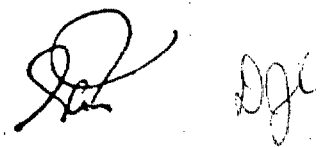
(i) the deposit of this Lease in the office of the Registrar General of Canada and the giving of notice of such deposit in the Canada Gazette in accordance with Section 86 of the Railway Act (Canada); and

(ii) the deposit thereof in the office of the Secretary of the Interstate Commerce Commission.

## 9. Default and Enforcement

9.1 If during the continuance of this Lease, one or more of the following events (hereinafter sometimes called "Events of Default") shall occur:

(A) default shall be made in the payment of any part of the Rental provided herein or any payment in respect of Casualty Occurrences and such default shall continue for a period of two Business Days after written notice from the Lessor;

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(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or sublease of any of the Units;

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 25 days after written notice from the Lessor specifying the default and demanding that the same be remedied; or

(D) any proceedings shall be commenced by or against the Lessee by way of a scheme of arrangement under the Railway Act (Canada) or for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or judgment or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceeding shall have been commenced, whichever shall be earlier;

then, in any such case, the Lessor, at its option may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, enjoy, sell, lease or otherwise dispose of the same in such manner as the Lessor may determine free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee in respect thereof, but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the Rental for any number of days less than a full



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Period by multiplying the Rental for such full Period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full Period) and also to recover forthwith from the Lessee (i) as liquidated damages for loss of the bargain and not as a penalty, a sum, with respect to all Units, which equals the Stipulated Loss Value of all the Units as of the rental payment date next preceding the date of termination of this Lease, and (ii) any damages and expenses, including reasonable solicitors' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of Rental or arising from the exercise by the Lessor of any remedies hereunder. Notwithstanding anything to the contrary contained in this clause (b), it is understood and agreed that upon and/or after payment of the amount to be paid by Lessee to Lessor under subclause (i) of this clause (b) Lessor shall refund to Lessee the net amount received by Lessor on any sale, lease or disposition of the Units after deducting all costs and expenses incurred in connection therewith.

The remedies in this Lease provided in favour of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favour existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

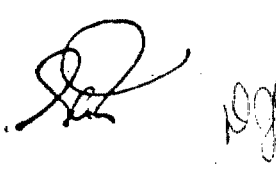
The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies and a waiver on one occasion shall not constitute a waiver of any such right as to any other occasion.

## 9.2 Return of Units upon Default

If this Lease shall terminate pursuant to Section 9.1, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(A) forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate;

(B) permit the Lessor to store such Units on such tracks at the risk of the Lessee until the date all such Units have been sold, leased or otherwise disposed of by the Lessor; and

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(C) at the direction of the Lessor, within 30 days after the receipt of any such direction, transport the same to any place on the lines of railroad operated by it or any of its affiliates or to any connecting carrier for shipment, specified by the Lessor in such direction.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court having jurisdiction in the premises the Lessor shall be entitled to a court order, judgment or decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, lessee or user, such rights of inspection.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 9.2, the Lessee hereby irrevocably appoints the Lessor as its agent and attorney, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit.

#### 10. Assignment; Possession and Use

Subject to the provisions of Section 8.3, this Lease shall be assignable in whole or in part by the Lessor to any corporation incorporated and resident in Canada or any province or territory thereof without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall enure to the benefit of the Lessor's assigns. Whenever the Lessor is referred to in this Lease, it shall apply and refer to each assignee of the Lessor.

So long as an Event of Default shall not have occurred and is then continuing under this Lease, the Lessee shall be entitled to the quiet enjoyment, possession and use of the Units in accordance with the terms of this Lease, but, except as otherwise expressly provided herein, the Lessee shall not without the prior written consent of the Lessor assign or transfer its leasehold interest under this Lease in the Units or any of them (except to the extent that the provisions of any mortgage now or hereafter




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created on any of the lines of railroad of the Lessee may subject the Lessee's leasehold interest to the lien thereof). In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor not related to the ownership of the Units or to the extent that the provisions of any mortgage now or hereafter created on any of the lines of railroad of the Lessee may subject the Lessee's leasehold interest to the lien thereof) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions hereof.

So long as an Event of Default shall not have occurred and is then continuing under this Lease, the Lessee shall be entitled to the possession of the Units and to the use thereof by it or any affiliated or subsidiary corporation upon its or their lines of railroad or upon lines of railroad over which the Lessee or such other corporation has trackage or other operating rights or over which railroad equipment of the Lessee or any such other corporation is regularly operated pursuant to contract, and also to permit the use of the Units upon other lines of railroad in the usual interchange of traffic (if such interchange is customary at the time), but only upon and subject to all the terms and conditions of this Lease and without in any way relieving the Lessee from any obligation or liability hereunder.

Nothing in this Section shall be deemed to restrict the right of the Lessee (i) to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railway company incorporated under the laws of Canada (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become amalgamated, merged or consolidated and which shall have acquired the property of the Lessee as an entirety or substantially as an entirety; or (ii) without the prior written consent of the Lessor to sublease any Unit to any party for a period (including renewals) not exceeding one year; or (iii) to sublease any Unit to any party for a period (including renewals) of more than one year with the prior written consent of the Lessor, such consent not to be unreasonably withheld; provided, however, that the rights of such sublessee are made expressly subordinate to the rights and remedies of the Lessor under this Lease and no such sublease shall purport to extend beyond the Termination Date. No such sublease shall relieve the Lessee of any liability or obligation hereunder which shall be and remain that of a principal and not a surety.



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11. Purchase Option

Provided that this Lease has not been earlier terminated and no Event of Default has occurred and is then continuing hereunder, the Lessee may, by not less than 180 days prior written notice irrevocably elect to purchase all, but not less than all, the Units then covered by this Lease at the end of the 30th Period or at the end of the 35th Period for the applicable Option Price.


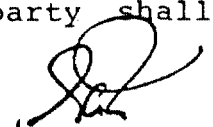
In the event the Lessee elects to purchase the Units, upon payment of the applicable Option Price, the Lessor shall upon request of the Lessee deliver to or upon the order of the Lessee a bill of sale (without recourse, representations or warranties) for such Units executed by the Lessor and such other documents as may reasonably be required in order to transfer to the Lessee title to such Units free and clear of all liens, security interests and other encumbrances created by or through the Lessor.

For the purpose of this Section the following terms have the following meanings:

"Fair Market Value" means with respect to any Unit an amount determined on the basis of, and equal in amount to, the value which would have been obtained in an arm's length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession or (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and in such determination, cost of removal from the location of current use shall not be deducted from such value; provided however, there shall be excluded any value attributable to Temporary Alterations made by the Lessee pursuant to the provisions hereof.

"Option Price" means with respect to the end of the 30th Period of the Lease, an amount equal to 25% of the Lessor's Acquisition Cost of each Unit as set forth in Schedule A hereto which is then subject to this Lease, and, with respect to the end of the 35th Period of the Lease, the Fair Market Value of each Unit set forth in Schedule A hereto which is then subject to this Lease.

If, after 60 days from the giving of notice by the Lessee of the Lessee's election to purchase the Units at the end of the 35th Period of the Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units then subject to this Lease, the Fair Market Value thereof shall be determined in accordance with the following procedure: If either party to such determination shall have given written notice to the other requesting determination of the Fair Market Value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 10 Business Days after such notice is given, each party shall


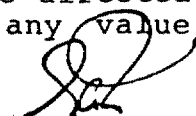


appoint an independent appraiser within 10 Business Days after such notice is given and the two appraisers so appointed shall within 10 Business Days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 10 Business Days after such notice is given, either party may apply, to make such appointment, to a judge of the Supreme Court of Ontario and both parties shall be bound by the appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Value of the Units then subject to this Lease, within 10 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Value of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from that of the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Value. The provision for this appraisal procedure shall be the exclusive means of determining the Fair Market Value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

## 12. Renewal

In the event that the Lessee shall not elect to purchase the Units in accordance with the provisions of Section 11 above, and provided that this Lease has not been earlier terminated and no Event of Default has occurred and is then continuing, the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the expiration of the Term elect to renew the Lease upon the same terms and conditions as set forth herein save and except that (i) the renewal term shall be for a term not in excess of the remaining useful life of the Units and in any case for a minimum period of two years; (ii) rental for the renewal term shall be the fair market rental (hereinafter in this Section 12 called the "Fair Market Rental") for the Units determined as provided below; and (iii) there shall be no further rights of renewal except as otherwise expressly provided therein.


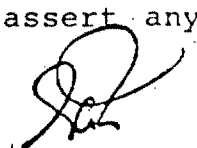
For the purposes of this Section 12, the Fair Market Rental shall be determined for the extended term of this Lease on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee and an informed and willing lessor for a period equal to such extended term, under no compulsion to lease having regard to the terms and conditions of this Lease. In such determination, the costs of removing the Units from the location of current use shall not be a deduction and an assumption shall be made that the Units have been collected in one place directed by the Lessor. There shall, however, be excluded any value



attributable to Temporary Alterations made by the Lessee pursuant to the provisions hereof.

Stipulated Loss Values for each Unit subject to any such extension of this Lease for the term of any such extension shall be determined on the basis of, and shall be equal in amount to, the value which would obtain for any such Unit immediately prior to a Casualty Occurrence with respect thereto in an arm's-length transaction between an informed and willing buyer-user and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current user shall not be a deduction from such value. There shall, however, be excluded any value attributable to additions, modifications and improvements which the Lessee is entitled to remove pursuant to any of the provisions hereof.

If, after 60 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental or Stipulated Loss Values of the Units, such Fair Market Rental or Stipulated Loss Values shall be determined in accordance with the following procedure: If either party to such determination shall have given written notice to the other requesting determination by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 10 Business Days after such notice is given, each party shall appoint an independent appraiser within 10 Business Days after such notice is given, and the two appraisers so appointed shall within 10 Business Days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 10 Business Days after such notice is given, either party may apply, to make such appointment, to a judge of the Supreme Court of Ontario and both parties shall be bound by the appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental and/or the Stipulated Loss Values of the Units then subject to this Lease or any extended term thereof, within 10 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental and/or Stipulated Loss Values of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from that of the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental and/or Stipulated Loss Values. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and/or Stipulated Loss Values and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any






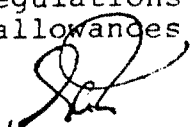
judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

13. Return of Units upon Expiration of Term

As soon as practicable on or after the expiration of the Term, the Lessee will (unless the Units are sold to the Lessee or shall have suffered a Casualty Occurrence), at its own cost and expense, at the request of the Lessor, deliver possession of any Units to the Lessor upon such storage tracks of the Lessee in Canada as the Lessor may reasonably designate and permit the Lessor to store such Units on such tracks for a period not exceeding 180 days and transport the same, at any time within such 180 day period, to any reasonable place on the lines of railroad operated by the Lessee in Canada or to any connecting carrier for shipment, all as directed by the Lessor upon not less than 30 days' written notice to the Lessee or deliver the Units to such other place as shall be mutually agreed upon; the movement and storage of the Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any Unit, to inspect the same; provided however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising either on behalf of the Lessor or any prospective purchaser, lessee or user, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinabove provided are of the essence of this Lease, and upon application to any court having jurisdiction in the premises, the Lessor shall be entitled to a judgment, order or decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. Each Unit returned to the Lessor pursuant to this Section shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted and (ii) meet the standards then in effect under the interchange rules of the Association of American Railroads if applicable and the Canadian Transport Commission.

14. Income Tax Representation and Indemnity

The Lessee represents and warrants that the owner of each Unit, shall, for each taxation year throughout which it does not qualify as a corporation of the type described in paragraph 1100 (16) (a) of the Income Tax Regulations (Canada), be entitled to a capital cost allowance with respect to the Units computed at a rate of not less than 15% per annum on a declining balance against its net income from renting "leasing properties" as provided in subsection 1100 (15) of the Income Tax Regulations (Canada) computed before deducting capital cost of allowances



and, if it qualifies as a corporation of the type described in clause 127(10.1) (d)(ii)(B) of the Income Tax Act (Canada), it shall be entitled to investment tax credit at the rate of 7% of the capital cost of the Units of which 20% qualifies as a refundable investment tax credit as defined in section 127.1 of the Income Tax Act (Canada). The Lessor and the Lessee hereby confirm and agree that as between them the Lessor shall be the owner of the Units and that the Lessor's Acquisition Cost is equal to the cost of the Units.

If, due to any amendment, change or repeal of the Income Tax Act (Canada), or the Regulations promulgated thereunder (hereinafter collectively called the "Act") in whole or in part, as in effect on the date hereof which amendment, change or repeal shall become effective in respect of any period prior to the Rental Commencement Date (whether or not enacted before such Date) or due to the inaccuracy of any representation herein or heretofore in writing made by the Lessee to the Lessor, the Lessor shall lose or shall not have the right to claim or shall suffer a disallowance of all or any portion of such capital cost allowance, interest deduction, investment tax credit or losses with respect to any Unit (collectively called the "Tax Benefits"), the Rental applicable to such Unit set forth in Section 3 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Tax Benefits have not been claimed, or if claimed and then disallowed on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's net return in respect of such Unit under this Lease to equal the net return that would have been available if the Lessor had been entitled to utilization of all or such portion of such Tax Benefits which was not claimed or was disallowed and the Lessee shall forthwith pay to the Lessor the amount of any interest and/or penalty, which may be assessed under the Act against the Lessor attributable to the loss of all or any portion of such Tax Benefits, together with such additional amount as may be required to put the Lessor in the same position as if such interest and/or penalty had not been assessed; provided however, that if written notice to the Lessee by the Lessor that such Tax Benefits have not been claimed, or if claimed have been disallowed, shall be given after the expiration of the term of this Lease, then within 30 days after the giving of such notice the Lessee shall pay to the Lessor as supplemental rent hereunder such amount as in the reasonable opinion of the Lessor will cause the Lessor's net return in respect of such Unit under this Lease to equal the net return that would have been available if the Lessor had been entitled to utilization of all or such portion of such Tax Benefits which were not claimed or were disallowed and the Lessee shall forthwith pay to the Lessor the amount of any interest and/or penalty, which may be assessed under the Act against the Lessor attributable to the loss of all or any portion of such Tax Benefits with such additional amount as may be required to put the Lessor in the same after-tax position as if

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such interest and/or penalty had not been assessed; provided further, however, that such Rental and interest and/or penalty which may be assessed under the Act against the Lessor shall not be so increased if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or if there shall have been disallowed with respect to the Lessor, all or any portion of such Tax Benefits with respect to such Unit as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under Section 6 hereof;


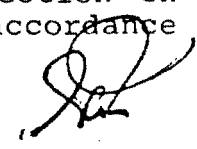
(ii) transfer by the Lessor of legal title to such Unit, the disposition by the Lessor of any interest in such Unit or the reduction by the Lessor of its interest in the Rentals from such Unit under this Lease, unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the failure of the Lessor to claim such Tax Benefits in its income tax return for the appropriate year or the failure of the Lessor to follow proper procedure in claiming such capital cost allowance;

(iv) the failure of the Lessor to have sufficient income to benefit from the deduction of such Tax Benefits; or

(v) the use by the Lessor of any elective provision of the Act which has the effect of deferring or reducing any of the Tax Benefits.

The Lessor agrees that if, in the opinion of its or the Lessee's independent tax counsel (herein referred to as "Counsel"), a bona fide claim to all or a portion of such Tax Benefits on any Unit exists in respect of which the Lessee is required to pay increased rental and interest and/or penalty as aforesaid to the Lessor as above provided, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to sustain such claim. The Lessor may take such action prior to making payment of the amounts claimed pursuant to a notice of assessment or reassessment or may make such payment and then sue for a refund. In the latter event, if the final determination shall be adverse to the Lessor, the Lessee shall pay to the Lessor interest on the amount of the tax paid attributable to such Tax Benefits assessed or reassessed, computed at a rate per annum equal to the percentage determined in accordance with Section 3(b) hereof, plus one percent, from the date of payment of such tax to the date the Lessee shall reimburse the Lessor for such tax in accordance with the provisions of this Section on which the first adjusted rental payment is made in accordance with the provisions of this Section.



The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

The Lessee's agreement to pay any sums which may become payable pursuant to this Section shall survive the expiration or other termination of this Lease.

15. Mileage Allowance; Subrogation


Provided the Lessee is not in default hereunder, the Lessee shall be entitled to (i) all mileage allowances and other similar moneys payable by reason of the use of the Units, and any such mileage allowances or other similar moneys received by the Lessor shall be forthwith remitted to the Lessee, and (ii) the proceeds of any claim or right of the Lessor or the Lessee against third persons for injury, damage or loss with respect to any Unit or the use or operation thereof, including settlements pursuant to the rules of the Association of American Railroads, and the Lessee shall be subrogated to the extent of the Lessee's interest to all the Lessor's rights of recovery therefor against any other person, firm or corporation. The Lessor hereby authorizes the Lessee to make settlement of, receive payment and receipt for any and all such claims on behalf of the Lessor, and the Lessor agrees to execute and deliver from time to time such instruments and do such other acts and things as may be necessary or appropriate more fully to evidence the Lessee's authority and/or to vest in the Lessee such proceeds to the extent of the Lessee's interest therein or to effect such subrogation; and in the event of any loss, damage or destruction in respect of which the Lessee is entitled to proceeds or subrogation as aforesaid, the Lessor shall refrain from doing any act or executing any instrument which would prejudice the right of the Lessee to such proceeds or to such subrogation.

16. Further Assurances

The Lessee covenants and agrees from time to time at its expense to do all acts and execute all such instruments of further assurance as it shall be reasonably requested by the Lessor to do or execute for the purpose of fully carrying out and effectuating this Lease and the intent hereof.

17. Expenses

The Lessee will, from time to time and at its expense, do and perform any act and will execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection or recording, to the satisfaction of the Lessor and its counsel, of



the Lessor's interests hereunder in the Units, or for the purpose of carrying out the intention of this Lease. The Lessee will promptly furnish to the Lessor evidence of such execution, acknowledgement and delivery.

The Lessee will pay the reasonable costs and expenses of the Lessor (including fees and expenses of counsel) involved in the preparation of this Lease and all documents provided herein.

18. Interest on Arrears

Anything to the contrary herein contained notwithstanding, any Arrears shall bear interest at a rate per annum equal to the percentage determined in accordance with Section 3(b) hereof, plus one percent, for the period of time during which they are overdue and shall be payable on demand.

19. Notices

Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when personally served upon an officer of the recipient, when sent by telex or similar means or when, first-class postage prepaid, addressed as follows:

if to the Lessor, at 5050 South Service Road, Burlington, Ontario, L7R 4C8, Telex No. 06-23626, Attention: Secretary;


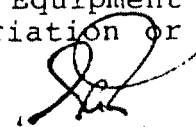
if to the Lessee, at 935 de La Gauchetiere West, Montreal, Quebec, H3B 2M9, Telex No. 055-61899, Attention: Treasurer;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing and any such notice shall be conclusively deemed to be received when so delivered, transmitted or when mailed.

20. Severability; Effect and Modification of Lease

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, except the Equipment Purchase Agreement, with respect to the Units. No variation or



modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Parties hereto.

21. Execution and Counterparts

This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in such case such counterparts together shall constitute but one and the same instrument.

22. Law Governing

This Lease shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein.

23. Effective Date

This Lease and the obligations of the parties hereto shall be effective as and from the date first above written.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed, as of the date first above written.

Seal

CITIBANK LEASING CANADA LIMITED

By [Signature]  
Vice-President

By [Signature]  
Assistant Vice-President

Seal

CANADIAN NATIONAL RAILWAY COMPANY



By G. W. Ranges  
Vice-President,  
Strategic Policy and Planning

By [Signature]  
Deputy Secretary

LIST OF SCHEDULES

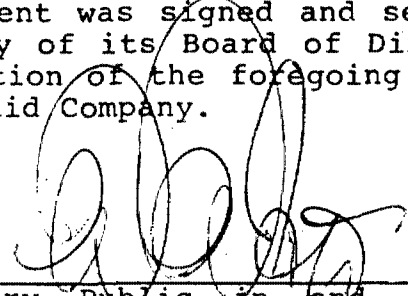
- A. Description of Units
- B. Stipulated Loss Values
- C. Delivery and Acceptance Certificate

PROVINCE OF QUEBEC

CITY OF MONTREAL

)  
) ss.:  
)

On this November 26, 1985, before me personally appeared George W. Lange, to me personally known, who, being by me duly sworn, says that he is the Vice-President, Strategic Policy and Planning of Canadian National Railway Company, that one of the seals affixed to the foregoing instrument is the seal of said Company, that said instrument was signed and sealed on behalf of said Company by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Company. (2)

  
\_\_\_\_\_  
Notary Public in and for the  
Province of Ontario

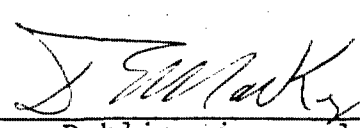
(Notarial Seal)

PROVINCE OF ONTARIO

CITY OF TORONTO

)  
) ss.:  
)

On this November 27, 1985, before me personally appeared DONALD J. LEWAN, to me personally known, who, being by me duly sworn, says that he is VICE PRESIDENT of Citibank Leasing Canada Limited, that one of the seals affixed to the foregoing instrument is the seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation. JR

  
\_\_\_\_\_  
Notary Public in and for the  
Province of ONTARIO

(Notarial Seal)

SCHEDULE A

TO

LEASE OF RAILROAD EQUIPMENT

Type	Specifications	Builder	Lessee's Road Numbers (Both Inclusive)	Quantity	Estimated Unit Price	Estimated Total Price	Estimated Time and Place of Delivery
Fully enclosed 70-Ton Low Deck Tri-Level Freight Cars	CN's General Specifications SS-1974 Revised July, 1976, CN Specification F-140-3 dated August, 1985 and CN General Arrangement Drawing 9H-51923-B, Builder's Proposal dated 12 August 1985 and letter of 22 August 1985, and CN's letter dated 22 August 1985	Hawker Siddeley Canada Inc.	CN 704365 through CN 704519	155	CND \$122,520	CND \$18,990,600	November to December 1985 Trenton, N.S.

*[Handwritten signature]*

*[Handwritten initials]*



# SCHEDULE B TO LEASE

## STIPULATED LOSS VALUES

The Stipulated Loss Value of any Unit to be paid on a rental payment date during the Term shall be an amount equal to the percentage of the Lessor's Acquisition Cost of such Unit set forth opposite such Rental payment date in the following schedule.

<u>Period</u>	<u>Rental Payment Date</u>	<u>Percentage of Lessor's Acquisition Cost</u>
1	August 1, 1986	108.86
2	February 1, 1987	109.76
3	August 1, 1987	108.50
4	February 1, 1988	110.92
5	August 1, 1988	109.51
6	February 1, 1989	110.89
7	August 1, 1989	109.32
8	February 1, 1990	109.71
9	August 1, 1990	107.96
10	February 1, 1991	107.43
11	August 1, 1991	105.48
12	February 1, 1992	104.08
13	August 1, 1992	101.92
14	February 1, 1993	99.75
15	August 1, 1993	97.34
16	February 1, 1994	94.44
17	August 1, 1994	91.76
18	February 1, 1995	88.16
19	August 1, 1995	85.17
20	February 1, 1996	80.90
21	August 1, 1996	77.57
22	February 1, 1997	72.61
23	August 1, 1997	68.91
24	February 1, 1998	63.27
25	August 1, 1998	59.15
26	February 1, 1999	52.85
27	August 1, 1999	48.27
28	February 1, 2000	41.29
29	August 1, 2000	36.19
30	February 1, 2001	25.00
31	August 1, 2001	20.88
32	February 1, 2002	16.35
33	August 1, 2002	11.40
34	February 1, 2003	8.00
35	August 1, 2003	8.00



10/21

SCHEDULE C TO LEASE

Certificate of Acceptance

TO: Citibank Leasing Canada Limited

I, the duly authorized representative of Citibank Leasing Canada Limited (the "Lessor") and Canadian National Railway Company (the "Lessee"), for the purposes of the Lease of Railroad Equipment (the "Lease") dated as of November 22, 1985, between the Lessee and the Lessor, DO HEREBY CERTIFY that there has been inspected on behalf of the Lessor the following units of railroad equipment, and found to be completed and marked in accordance with the Lease and the applicable specifications, requirements and standards referred to in the Lease.

I do further certify that there is plainly, distinctly, permanently and conspicuously marked on each side of the above described units, in letters not less than three-eighths of one inch in height, the words,

"OWNERSHIP FILED WITH THE REGISTRAR GENERAL OF CANADA AND THE I.C.C."

I further certify that there has been delivered to the Lessor at \_\_\_\_\_, Nova Scotia and fully and finally accepted by me on behalf of the Lessee and the Lessor under the Lease, the following units of railroad equipment constructed by Hawker Siddeley Canada Inc.:

Description

Quantity

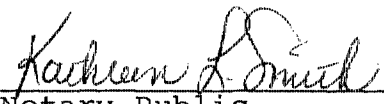
No.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Inspector and Authorized  
Representative of the Lessor  
and Lessee

District of Columbia    )  
                                  )  
City of Washington        )

I, Kathleen L. Smith, a notary public for the District of Columbia, do hereby swear that on this 5<sup>th</sup> day of December, 1985, I have compared a copy of the original document entitled "Lease of Railroad Equipment Between Citibank Leasing Canada Limited and Canadian National Railway Company" and found the copy to be complete and identical in all respect to the original documents.

  
\_\_\_\_\_  
Notary Public

My Commission Expires May 14, 1990